

REMARKS

Reconsideration of the above-identified application in view of the present amendment is respectfully requested.

It is acknowledged, with appreciation, the allowance of claims 45 and 54, and the indication of the allowability of claim 17.

By the present amendment, claims 1, 44, and 46-50 are amended, and new claims 61 and 62 are added.

It is respectfully submitted that the presently pending claims are allowable in view of the previously cited prior art.

Turning to claim 1, it should be noted that claim 1 recites, in pertinent part, that the receptacle has a longitudinal axis and that each of the teeth arranged around a closed oval curve each have a longitudinal axis. Further, claim 1 recites that the longitudinal axes of the teeth are substantially parallel to the longitudinal axis of the receptacle.

As has been discussed at length within the previous prosecution of the subject application, Laporte discloses a device that includes a dispensing head with two lateral rectilinear rows of teeth, with the teeth not being arranged around a closed oval curve. As such, the Laporte patent generally does not disclose the subject matter as recited in the claims and specifically claim 1. It is respectfully submitted that the patent to Chu fails to provide for the shortcomings of the Laporte patent and actually teaches away from the present invention. Specifically, the patent to Chu discloses a dispensing device (90) that comprises a manifold (24) and a cover (32) removably attached to the manifold (see column 5, lines 55-60). The

cover (32) comprises teeth or bristles (74) that are curved relative to the longitudinal axis of the cover (see column 5, lines 64-66). As such, the teeth or bristles (74) are perpendicular to the longitudinal axis of a container (80) that contains the substance to be applied (see Fig. 9 of the Chu patent). As such, the teachings provided by the Chu patent actually guide the person of ordinary skill in the art from having a device with teeth that are substantially parallel to the longitudinal axis of the receptacle. Accordingly, if a person of ordinary skill in the art were even persuaded to attempt to modify the Laporte device in view of the teachings from Chu, the present invention, as recited in claim 1, would not be provided.

Still further, it should be noted that within the Laporte device, the head (3) includes teeth that are mounted directly onto a reservoir (2) by means of screwing or snap fitting (see column 2, lines 65-66 of the Laporte patent). In distinction, the Chu patent discloses that the cover (32) with the bristles (74) is not mounted directly on the container (80), but is mounted via a manifold (24). This construction enables the cover (32) to be made of a flexible thermal plastic rubber (see column 5, lines 12-14). As such, the Laporte and Chu devices are quite different. Consequently, the person of ordinary skill in the art would certainly not seek to modify the structure of Laporte in view of teachings provided by Chu. As such, it is respectfully submitted that claim 1 and all of the claims dependent therefrom are allowable in view of Laporte and Chu.

It should be noted that some of the claims dependent upon claim 1 were rejected in view of an asserted combination that included the patent to Holland. However, it should be noted that the Holland device is an applicator that includes a

removable applicator head assembly (22) secured to a face plate (16) in a pivotable manner. As shown in Fig. 1 of the Holland patent, the head assembly (22) and the face plate (16) both have a circular shape. In distinction, both the Laporte and Chu devices have an applicator portion that is not circular, but rectangular or oval. As such, the person of ordinary skill in the art would not even seek to try to modify a device resulting from the teachings of Laporte and Chu because of the non-circular configuration.

Turning to the next independent claim (claim 43) it should be noted that the claim recites, in pertinent part, that the applicator portion is removable, being configured for fixing on the receptacle in a first position and in a second position different from the first position. The receptacle and the applicator portion are configured so that in the first position the at least one delivery orifice does not communicate with the substance contained in the receptacle and in the second position the at least one delivery orifice communicates with the substance contained in the receptacle.

The Office action has cited the patent to Kajgana and has proffered a modification of the previously asserted combination of teachings of Laporte and Chu in view of Kajgana. However, it should be noted that the Kajgana patent discloses a device that includes a main tinter body (2) fixed on a container (1). The body (2) of the Kajgana device is not configured for fixing on the receptacle in a first closed position and in a second opened position that is different from the first position. Within the Kajgana device, the body (2) is always in an open position. As such, the Kajgana patent does not provide for the deficiencies of the Laporte and Chu patent

in that even if the various teachings were combined, the present invention would not be provided as set forth in claim 43.

Turning to independent claim 44, it should be appreciated that the claim recites, in pertinent part, an inside space that is capable of being isolate from an inside of the receptacle. Within the Kajgana device, a circular member (8) does not define an inside space that is capable of being isolated from an inside of the receptacle. On the contrary, within the Kajgana device, an orifice (3) is in communication with an inside of the receptacle (1). Thus, the Kajgana patent fails to provide such a feature, which is also lacking within the underlying asserted combination of Laporte and Chu. As such, claim 44 is allowable over the proffered combination of Laporte, Chu, and Kajgana.

Independent claims 46-50, each recite, in pertinent part, that the applicator is removably mounted on the adapter portion. The Kajgana device has a main tinter body (2) that is directly mounted on a neck of the container (1). As such, the Kajgana patent does not provide for such claim limitations, and any combination that includes the Kajgana patent would logically not have such structural limitations. Accordingly, claims 46-50 are allowable in view of the proffered combination of Laporte, Chu, and Kajgana.

Independent claim 51 recites that the receptacle has a plurality of substance delivery ducts and the applicator portion has a plurality of shutters suitable for engaging in the ducts to shut them when the applicator portion is in a first position and suitable for taking up positions outside the ducts when the applicator portion is in a second position. The Holland device includes a face plate (16) with openings

(32). The Holland device does not have a receptacle with a plurality of substance delivery ducts. As such, the Holland patent neither discloses or suggests the inclusion of such structure. Accordingly, claim 51 is allowable in view of the proffered combination of Laporte, Chu, and Holland.

New claim 61 recites in pertinent part "said outer rows meeting each other around said at least one intermediate row." Such a limitation reads upon the example shown in Fig. 13 of the subject patent application. In general, it should be noted that the Laporte device has a dispensing head with two lateral rows (5) and an intermediate row (6). The lateral rows (5) do not meet each other around the intermediate row (6). Within the Laporte device, the rows are parallel.

Turning to the Chu patent, the disclosed device includes two rows (74) and a rectilinear intermediate row. The outer rows (74) do not meet each other around the intermediate row. Within the Chu device, the outer rows are separated, at the longitudinal ends, by spaces without teeth. As such, it should be clear that the Laporte and Chu patents, taken alone or in any combination, would not provide the structural limitations set forth in claim 61. Accordingly, claim 61 is allowable.

Claim 62 recites "said closed curve has two longitudinal ends, the closed curve having a single tooth at each of said longitudinal ends."

The Laporte device includes a dispensing head for applying a product to the hair. The dispensing head has two lateral rows of teeth (5). As best shown within Fig. 4 of the Laporte patent, the dispensing head has, at each longitudinal end, three teeth that are aligned perpendicularly to the longitudinal axis of the dispensing head. As such, it should be appreciated that the Laporte patent does not disclose

or suggest a plurality of teeth arranged around a closed curve having two longitudinal ends, with the closed curve having a single tooth at each of the longitudinal ends.


Turning to the Chu patent, it is to be recalled that the brush cover (32) has two outer rows of teeth (74). As best shown within Fig. 10 of the Chu patent, the dispensing device has, at each longitudinal end, three teeth that are aligned perpendicularly to the longitudinal axis of the brush cover (32). As such, it is to be appreciated that the Chu patent does not disclose or suggest a closed curve of teeth having a single tooth at each longitudinal end.

Accordingly, the Laporte and Chu patents either taken alone or in any combination, would not provide the present invention as set forth in new claim 62. As such, new claim 62 is allowable.

If there are any additional fees resulting from this communication, please charge same to our Deposit Account No. 16-0820, our Order No. 35485.

Respectfully submitted,

PEARNE & GORDON LLP

By: 

Ronald M. Kachmarik, Reg. No. 34512

1801 East 9th Street, Suite 1200
Cleveland, Ohio 44114-3108
(216) 579-1700

Date: September 17, 2004